IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 1208/2004

Date of decision 18.5.2007

M/s Asia Resorts Limited. …Petitioner.

Versus

The H.P. State Industrial Development Corporation
…Respondents

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*. Yes.*

For the petitioners : **Mr. Rakeshwar Lal Sood, Sr. Advocate with Mr. Vikas Rajput, Advocate**

For the respondent **Mr. Ajay Sood, Advocate**

Rajiv Sharma, J. (Oral)

By way of this petition, the following reliefs have been sought for:

> **"(a) to quash Annexure P-10 i.e. the communication dated 5.10.2004, issued by the respondent to the petitioner with further directions to the respondent to refund a sum of Rs. 22,870/- and Rs. 19,000/- along with interest thereon @ 13% per annum with quarterly rests for value received.**
>
> **(b) to call for the records of the case;**
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> **(c) to callow any other relief deemed fit by this Hon'ble Court in favour of the petitioner and against the respondents and**
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> **(d) to allow costs of the case in favour of the petitioner and against the respondents."**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? Yes.

Shorn of all the unnecessary details, the basic facts necessary for the adjudication of this petition are that the petitioner-company has repaid the entire term loan on 23rd February, 2004 for Manali Unit and also for Parwanoo Unit on 12th August, 2004. The respondent though has accepted the balance as on 23rd February, 2004 for Manali Unit and on 12.8.2004 for Parwanoo Unit, but has charged interest @ 0.25% amounting to Rs. 22,870/- towards pre-payment charges on a sum of Rs. 91,48,000/- and similarly a sum of Rs. 19,000/- has been charged as pre-payment charges on a sum of Rs. 76,000-00. The petitioner has also placed on record the copy of the receipts whereby a sum of Rs. 22,870/- has been received by the respondent-corporation for Manali Unit on 24th February, 2004 towards “interest income”. Mr. Rakeshwar Lal Sood, Sr. Advocate during the course of arguments has stated that a similar receipt was also issued by the corporation whereby a sum of Rs. 19,000/- has been received by the respondent-corporation towards ‘interest income’.

The petitioner-company had made representation to the Managing director of the respondent-corporation for waiver of pre-payment premium of Rs. 22,870/- on 15th February, 2004. The petitioner made another representation for waiver of pre-payment premium to the Managing Director of the Corporation on 25th February, 2004. Consequently, the petitioner was informed on 5th October, 2004 that the representation of the petitioner-company was considered for waiver of pre-payment premium against the outstanding term loan for hotel projects Manali and Parwanoo but the Board of Directors after considering the same have rejected the same on 3rd September, 2004. The copy of this communication has been placed on record as Annexure P-10 of the paper book.

Mr. Rakeshwar Lal Sood, Sr. Advocate appearing on behalf of the petitioner-company has strenuously argued that the respondent-

corporation had no authority under law to levy pre-payment charges @ 0.25% amounting to Rs. 22,870/- for Manali Unit and a sum of Rs. 19,000/- for Parwanoo Unit on balance term loan of Rs. 91,48,000/- and Rs. 76,00,000/- respectively. Mr. Rameshwar Lal Sood, Sr. Advocate has elaborated his submission by drawing the attention of this Court to the loan agreements entered into between the petitioner-company and respondent-corporation.

Mr. Ajay Sood, Advocate appearing on behalf of the respondent-corporation has supported the decision taken by the Board of Directors vide item No. 17 under the agenda 'levy of pre-payment charges on term loan' dated on 3rd September, 2004 .

I have heard the parties and perused the record.

The petitioner-company had raised two loans amounting to Rs. 1.50 crore for two separate units i.e. Manali Unit and Parwanoo Unit. The petitioner had paid a sum of Rs. 58,52,000/- upto 22.2.2004 for Manali Unit and Rs. 74,00,000/- for Parwanoo Unit upto 11.8.2004. The petitioner-company had admittedly liquidated its outstanding liabilities towards the term loan on 23rd February, 2004 by depositing a sum of Rs. 91,48,000/- and another sum of Rs. 76,00,000/- for Parwanoo Unit. I have gone through the loan agreements i.e. Annexure P-1, P-2 and P-3 carefully. There is no clause in the agreement on the basis of which the pre-payment or interest charges as mentioned in the receipt i.e. Annexure P-6 could be levied by the respondent-corporation. The edifice of the submissions of Mr. Ajay Sood, Advocate is Annexure R-8 dated **3rd September, 2004**. It will be apt to reproduce the same as under:

> **"The Managing Director's Memo No.68/Mtg. No. 203/2004 dated 15.09.2004 was considered by the Board of Directors along with the recommendations of the Advisory Committee. The Board concurred with the observations of the Advisory**

Committee and decided that the Corporation should continue to levy repayment premium @ Rs. 250/- per lac of the outstanding term loan to be repaid in total, leading to closure to the term loan account. The Board also decided that the principal of charging prepayment premium may be adopted as a permanent policy parameter under the term loan portfolio."

The gist of the decision taken by the Board of Directors is that the principal of charging prepayment premium was to be adopted as a permanent policy under the term loan portfolio**.** This decision has been admittedly taken by the Board of Directors on 3rd September, 2004 and will not relate back to the earlier agreements, which have been entered between the petitioner-company and respondent-corporation on 25.11.1997 and 14.12.1998 respectively**.** The policy decision taken by the Board of Directors of the respondent-corporation will apply prospectively and the same could not be given retrospective effect to impair the rights of the petitioner-company accrued to it on the basis of the earlier agreements entered with the respondent-corporation.

The upshot of the above discussion is that the action of the respondent-corporation to levy pre-payment premium/interest charges amounting to Rs. 22,870 for Manali Unit and Rs. 19,000/- for Parwanoo Unit is arbitrary and liable to be quashed and set aside.

Accordingly this petition is allowed with costs, which are quantified at Rs. 5,000/-. The impugned Annexure P-10 dated 5.10.2004 is quashed and set aside. The respondent-corporation is directed to refund a sum of Rs. 22,870/- charged for Manali Unit and another sum of Rs. 19,000/- charged for Parwanoo Unit with interest @ 6% per annum within a period of 4 weeks from the date of receipt of certified copy of this judgment.

(Rajiv Sharma), Judge

May 18, 2007
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